



Senate

General Assembly

January Session, 2007

File No. 232

Senate Bill No. 62

Senate, April 2, 2007

The Committee on Insurance and Real Estate reported through SEN. CRISCO of the 17th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT ADOPTING THE MARKET CONDUCT SURVEILLANCE MODEL ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2007*) Sections 2 to 13,
2 inclusive, of this act shall be known and may be cited as the "Market
3 Conduct Surveillance Act".

4 Sec. 2. (NEW) (*Effective October 1, 2007*) As used in sections 2 to 13,
5 inclusive, of this act:

6 (1) "Commissioner" means the Insurance Commissioner.

7 (2) "Complaint" means a written or documented oral
8 communication to the Insurance Department primarily expressing a
9 grievance, meaning an expression of dissatisfaction. For health
10 companies, a grievance means a written complaint submitted by or on
11 behalf of a covered person.

12 (3) "Comprehensive market conduct examination" means a review

13 of one or more lines of business of an insurer domiciled in this state
14 that is not conducted for cause. The term includes a review of rating,
15 tier classification, underwriting, policyholder service, claims,
16 marketing and sales, producer licensing, complaint handling practices
17 or compliance procedures and policies.

18 (4) "Insurance compliance audit" means a voluntary, internal
19 evaluation, review, assessment, audit, or investigation for the purpose
20 of identifying or preventing noncompliance with, or promoting
21 compliance with laws, regulations, orders, or industry or professional
22 standards, which is conducted by or on behalf of a company licensed
23 or regulated under title 38a of the general statutes, or which involves
24 an activity regulated under title 38a of the general statutes.

25 (5) "Insurance compliance self-evaluative audit document" means
26 documents prepared as a result of or in connection with an insurance
27 compliance audit. An insurance compliance self-evaluative audit
28 document may include a written response to the findings of an
29 insurance compliance audit. An insurance compliance self-evaluative
30 audit document may include, but is not limited to, as applicable, field
31 notes and records of observations, findings, opinions, suggestions,
32 conclusions, drafts, memoranda, drawings, photographs, exhibits,
33 computer generated or electronically recorded information, phone
34 records, maps, charts, graphs and surveys, provided such supporting
35 information is collected or developed for the primary purpose and in
36 the course of an insurance compliance audit.

37 (6) "Market conduct action" means any of the full range of activities
38 that the commissioner may initiate to assess the market and practices
39 of individual insurers, beginning with market analysis and extending
40 to targeted examinations. The commissioner's activities to resolve an
41 individual consumer complaint or other reports of a specific instance
42 of misconduct are not market conduct actions for purposes of sections
43 2 to 13, inclusive, of this act.

44 (7) "Market analysis" means a process whereby market conduct
45 surveillance personnel collect and analyze information from filed

46 schedules, surveys, required reports and other sources in order to
47 develop a baseline and to identify patterns or practices of insurers
48 licensed to do business in this state that deviate significantly from the
49 norm or that may pose a potential risk to the insurance consumer.

50 (8) "Market conduct examination" means the examination of the
51 insurance operations of an insurer licensed to do business in this state
52 in order to evaluate compliance with the applicable laws and
53 regulations of this state. A market conduct examination may be either
54 a comprehensive examination or a targeted examination. A market
55 conduct examination is separate and distinct from a financial
56 examination of an insurer performed pursuant to section 38a-14a of the
57 general statutes, but may be conducted at the same time.

58 (9) "Market conduct surveillance personnel" means those
59 individuals employed or contracted by the commissioner to collect,
60 analyze, review or act on information on the insurance marketplace,
61 which identifies patterns or practices of insurers.

62 (10) "National Association of Insurance Commissioners" or "NAIC"
63 means the organization of insurance regulators from the fifty states,
64 the District of Columbia and the four United States territories.

65 (11) "NAIC market regulation handbook" means a handbook,
66 developed and adopted by the NAIC or successor product that:

67 (A) Outlines elements and objectives of market analysis and the
68 process by which states can establish and implement market analysis
69 programs; and

70 (B) Sets up guidelines that document established practices to be
71 used by market conduct surveillance personnel in developing and
72 executing an examination.

73 (12) "NAIC market conduct uniform examination procedures"
74 means the set of guidelines developed and adopted by the NAIC
75 designed to be used by market conduct surveillance personnel in
76 conducting an examination.

77 (13) "NAIC standard data request" means the set of field names and
78 descriptions developed and adopted by the NAIC for use by market
79 conduct surveillance personnel in an examination.

80 (14) "Qualified contract examiner" means a person under contract to
81 the commissioner, who is qualified by education, experience and,
82 where applicable, professional designations, to perform market
83 conduct actions.

84 (15) "Targeted examination" means a focused exam conducted for
85 cause, based on the results of market analysis indicating the need to
86 review either a specific line of business or specific business practices,
87 including, but not limited to, underwriting and rating, marketing and
88 sales, complaint handling operations and management, advertising
89 materials, licensing, policyholder services, nonforfeitures, claims
90 handling or policy forms and filings. A targeted examination may be
91 conducted by desk examination or by an on-site examination.

92 (16) "Desk examination" means a targeted examination that is
93 conducted by an examiner at a location other than the insurer's
94 premises. A desk examination is usually performed at the offices of the
95 Insurance Department with the insurer providing requested
96 documents by hard copy, microfiche, discs or other electronic media
97 for review.

98 (17) "On-site examination" means a targeted examination conducted
99 at the insurer's home office or the location where the records under
100 review are stored.

101 (18) "Third-party model or product" means a model or product
102 provided by an entity separate from and not under direct or indirect
103 corporate control of the insurer using the model or product.

104 Sec. 3. (NEW) (*Effective October 1, 2007*) (a) The commissioner shall
105 conduct market conduct examinations for Connecticut policyholder
106 protection, which shall be accomplished by comprehensive or targeted
107 examinations of domestic insurers and targeted examinations of

foreign insurers as deemed necessary by the commissioner based on the results of market analysis. The commissioner may delegate the responsibility for conducting an examination of a domestic insurer, foreign insurer or an affiliate of an insurer to the Insurance Commissioner of another state if such Insurance Commissioner agrees to accept the delegated responsibility for the examination.

(b) The commissioner may delegate such responsibility to a commissioner of a state in which the domestic insurer, foreign insurer or affiliate has a significant number of policies or significant premium volume.

(c) If the commissioner elects to delegate responsibility for examining an insurer, the commissioner shall accept a report of the examination prepared by the commissioner to whom the responsibility has been delegated.

(d) In lieu of conducting a market conduct examination of an insurer, the commissioner shall accept a report of a market conduct examination on such insurer prepared by the Insurance Commissioner of the insurer's state of domicile or another state, provided:

(1) The laws of that state applicable to the subject of the examination are deemed by the commissioner to be substantially similar to those of this state;

(2) The examining state has a market conduct surveillance system that the commissioner deems comparable to the market conduct surveillance system required under sections 2 to 13, inclusive, of this act; and

(3) The examination from the other state's commissioner has been conducted within the past three years.

(e) If the Insurance Commissioner to whom the examination responsibility was delegated pursuant to subsection (a) of this section or the report of a market conduct examination prepared by the Insurance Commissioner of another state pursuant to subsection (d) of

139 this section did not evaluate the specific area or issue of concern to the
140 commissioner or a specific requirement of title 38a of the general
141 statutes, the commissioner may pursue a targeted examination or
142 market analysis of the unexamined area.

143 (f) The commissioner's determination under subsection (d) of this
144 section is discretionary with the commissioner and is not subject to
145 appeal.

146 (g) Subject to a determination under subsection (d) of this section, if
147 a market conduct examination conducted by another state results in a
148 finding that an insurer should modify a specific practice or procedure,
149 the commissioner shall accept documentation that the insurer has
150 made a similar modification in this state, in lieu of initiating a market
151 conduct action or examination related to that practice or procedure.
152 The commissioner may require other or additional practice or
153 procedure modifications as are necessary to achieve compliance with
154 specific state laws or regulations which differ substantially from those
155 of the state that conducted the examination.

156 (h) The provisions of this section shall apply notwithstanding any
157 inconsistent provisions in sections 38a-14 and 38a-15 of the general
158 statutes.

159 Sec. 4. (NEW) (*Effective October 1, 2007*) (a) (1) The commissioner
160 shall gather information from data currently available to the Insurance
161 Department, as well as surveys and required reporting requirements,
162 information collected by the NAIC and a variety of other sources in
163 both the public and private sectors and information from within and
164 outside the insurance industry from objective sources, information
165 from web sites for insurers, agents and other organizations and
166 information from other sources, provided the sources are published at
167 least annually in a bulletin or circular, prior to use. (2) Such
168 information shall be analyzed in order to develop a baseline
169 understanding of the marketplace and to identify for further review
170 insurers or practices that deviate significantly from the norm or that
171 may pose a potential risk to the insurance consumer. The

172 commissioner shall use the NAIC market analysis handbook as one
173 resource in performing this analysis or procedures, adopted by
174 regulation in accordance with chapter 54 of the general statutes, that
175 are substantially similar to the foregoing NAIC product. (3) The
176 commissioner shall use the following policies and procedures in
177 performing the analysis required under this section: (A) identify key
178 lines of business for systematic review; (B) identify companies for
179 further analysis based on available information.

180 (b) If the analysis compels the commissioner to inquire further into a
181 particular insurer or practice, the following continuum of market
182 conduct actions may be considered prior to conducting a targeted, on-
183 site market conduct examination. The action selected shall be made
184 known to the insurer in writing. These actions may include, but are not
185 limited to (1) correspondence with insurer; (2) insurer interviews; (3)
186 information gathering; (4) policy and procedure reviews; (5)
187 interrogatories; and (6) review of insurer self-evaluation and
188 compliance programs, including membership in a best-practice
189 organization.

190 (c) The commissioner shall select a market conduct action that is
191 cost effective for the Insurance Department and the insurer, while still
192 protecting the insurance consumer.

193 (d) The commissioner shall take those steps reasonably necessary to
194 eliminate requests for information that duplicate information provided
195 as part of an insurer's annual financial statement, the annual market
196 conduct statement of the National Association of Insurance
197 Commissioners or other required schedules, surveys or reports that are
198 regularly submitted to the commissioner, or with data requests made
199 by other states if that information is available to the commissioner,
200 unless the information is state specific, and coordinate market conduct
201 actions and findings with other states.

202 (e) Causes or conditions, if identified through market analysis, that
203 may trigger a targeted examination are:

204 (1) Information obtained from a market conduct annual statement,
205 market survey or report of financial examination indicating potential
206 fraud, that the insurer is conducting the business of insurance without
207 a license or is engaged in a potential pattern of unfair trade practice in
208 violation of section 38a-815 of the general statutes.

209 (2) A number of complaints against the insurer or a complaint ratio
210 sufficient to indicate potential fraud, conducting the business of
211 insurance without a license or a potential pattern of unfair trade
212 practice in violation of section 38a-815 of the general statutes. For the
213 purposes of this section, a complaint ratio shall be determined for each
214 line of business.

215 (3) Information obtained from other objective sources such as
216 published advertising materials indicating potential fraud, conducting
217 the business of insurance without a license, or evidencing a potential
218 pattern of unfair trade practice in violation of section 38a-815 of the
219 general statutes.

220 (4) Patterns of violations of insurance statutes and administrative
221 regulations adopted thereunder that cause consumer harm.

222 Sec. 5. (NEW) (*Effective October 1, 2007*) (a) Market conduct actions
223 taken as a result of a market analysis shall focus on the general
224 business practices and compliance activities of insurers, rather than
225 identifying infrequent or unintentional random errors that do not
226 cause consumer harm.

227 (b) (1) The commissioner may determine the frequency and timing
228 of such market conduct actions. The timing shall depend on the
229 specific market conduct action to be initiated, unless extraordinary
230 circumstances indicating a risk to consumers require immediate action.

231 (2) If the commissioner has information that more than one insurer
232 is engaged in common practices that may violate insurance statutes or
233 regulations, the commissioner may schedule and coordinate multiple
234 examinations simultaneously.

235 (c) The insurer shall be notified, as soon as possible, but not later
236 than sixty days before the estimated commencement of the market
237 conduct action of any practice or procedure which is to be the subject
238 of a market conduct action and shall be given an opportunity to
239 resolve such matters that arise as a result of a market analysis to the
240 satisfaction of the commissioner before any additional market conduct
241 actions are taken against the insurer. If the insurer has modified such
242 practice or procedure as a result of a market conduct action taken by
243 the Insurance Commissioner of another state, the commissioner shall
244 accept appropriate documentation that the insurer has satisfactorily
245 modified the practice or procedure and made similar modification to
246 such practice or procedure in this state.

247 (d) The provisions of this section shall apply notwithstanding any
248 inconsistent provisions in sections 38a-14 and 38a-15 of the general
249 statutes.

250 Sec. 6. (NEW) (*Effective October 1, 2007*) (a) When market analysis
251 identifies a pattern of conduct or practice by an insurer which requires
252 further investigation and less intrusive market conduct actions
253 identified in subsection (b) of section 4 of this act are not appropriate,
254 the commissioner may conduct targeted market conduct examinations
255 in accordance with the NAIC market conduct uniform examination
256 procedures and the market regulation handbook or procedures,
257 adopted by regulation in accordance with chapter 54 of the general
258 statutes, that are substantially similar to the foregoing NAIC products.

259 (b) If the insurer to be examined is not a domestic insurer, the
260 commissioner shall communicate with and may coordinate the
261 examination with the Insurance Commissioner of the state in which
262 the insurer is organized.

263 (c) Concomitant with the notification requirements established in
264 subsection (e) of this section, the commissioner shall post notification
265 on the NAIC examination tracking system or comparable NAIC
266 product as determined by the commissioner that a market conduct
267 examination has been scheduled.

268 (d) The commissioner may not conduct a comprehensive market
269 conduct examination more frequently than once every three years. The
270 commissioner may waive the conduct of a comprehensive market
271 conduct examination based on market analysis.

272 (e) (1) Prior to commencement of a targeted on-site market conduct
273 examination, market conduct surveillance personnel shall prepare a
274 work plan and proposed budget. Such proposed budget, which shall
275 be reasonable for the scope of the examination, and work plan shall be
276 provided to the company under examination, as soon as possible but
277 not later than sixty days before the estimated commencement of the
278 examination.

279 (2) Market conduct examinations shall, to the extent feasible, utilize
280 desk examinations and data requests prior to a targeted on-site
281 examination.

282 (3) Market conduct examinations shall be conducted in accordance
283 with the provisions set forth in the NAIC market regulation handbook
284 and the NAIC market conduct uniform examinations procedures or
285 procedures adopted by regulation in accordance with chapter 54 of the
286 general statutes, that are substantially similar to the foregoing NAIC
287 products.

288 (4) Prior to the conclusion of a market conduct examination, the
289 individual among the market conduct surveillance personnel who is
290 designated as the examiner-in-charge shall schedule an exit conference
291 with the insurer.

292 (f) Announcement of the examination shall be sent to the insurer
293 and posted on the NAIC's examination tracking system or comparable
294 NAIC product, as determined by the commissioner, as soon as possible
295 but in no case later than sixty days before the estimated
296 commencement of the examination. Such announcement shall contain
297 (1) the name and address of the insurer being examined; (2) the name
298 and contact information of the examiner-in-charge; (3) the reason for
299 and the scope of the targeted examination; (4) the date the examination

300 is scheduled to begin; (5) identification of any noninsurance
301 department personnel who will assist in the examination, if known at
302 the time the notice is prepared; (6) a time estimate for the examination;
303 (7) a budget and work plan for the examination and identification of
304 reasonable and necessary costs and fees that will be included in the
305 bill, if the cost of the examination is billed to the company; and (8) a
306 request for the insurer to name its examination coordinator.

307 (g) If a targeted examination is expanded beyond the reasons
308 provided to the insurer in the notice of the examination required under
309 this section, the commissioner shall provide written notice to the
310 insurer, explaining the extent of the expansion and the reasons for the
311 expansion. The department shall provide a revised work plan to the
312 insurer before the beginning of any significantly expanded
313 examination, unless extraordinary circumstances indicating a risk to
314 consumers require immediate action.

315 (h) The commissioner shall conduct a pre-examination conference
316 with the insurer examination coordinator and key personnel to clarify
317 expectations thirty days prior to commencement of the examination.

318 (i) The department shall use the NAIC standard data request or
319 comparable product, adopted by regulation in accordance with chapter
320 54 of the general statutes, that is substantially similar to the foregoing
321 NAIC product.

322 (1) A company responding to a commissioner's request to produce
323 information shall produce it as it is kept in the usual course of business
324 or shall organize and label it to correspond with the categories in the
325 demand.

326 (2) If a commissioner's request does not specify the form or forms
327 for producing electronically stored information, a company
328 responding to the request shall produce the information in a form or
329 forms in which the company ordinarily maintains it or in a form or
330 forms that are reasonably usable.

331 (3) A company responding to an information request need not
332 produce the same electronically stored information in more than one
333 form.

334 (4) A company responding to an information request need not
335 provide the electronically stored information from sources that the
336 company identifies as not reasonably accessible because of undue
337 burden or cost.

338 (j) The commissioner shall adhere to the following timeline, unless a
339 mutual agreement is reached with the insurer to modify the timeline.

340 (1) The commissioner shall deliver the draft report to the insurer
341 within sixty days of the completion of the examination. Completion of
342 the examination shall be defined as the date the commissioner
343 confirms in writing that the examination is completed. (2) The insurer
344 shall respond with written comments within thirty days of receipt of
345 the draft report. (3) The department shall make a good faith effort to
346 resolve issues and prepare a final report within thirty days of receipt of
347 the insurer's written comments, unless a mutual agreement is reached
348 to extend the deadline. The commissioner may make corrections and
349 other changes, as appropriate. (4) The insurer shall, within thirty days,
350 accept the final report, accept the findings of the report, file written
351 comments or request a hearing. An additional thirty days shall be
352 allowed if agreed to by the commissioner and the insurer. Any such
353 hearing request shall be made in writing and shall be in accordance
354 with chapter 54 of the general statutes. The final written and electronic
355 market conduct report shall include the insurer's written response and
356 any agreed to corrections or changes. The response may be included
357 either as an appendix or in text of the examination report. The
358 company is not obligated to submit a response. References to specific
359 individuals by name shall be limited to an acknowledgement of their
360 involvement in the conduct of the examination.

361 (k) (1) Upon adoption of the examination report pursuant to
362 subsection (j) of this section, the commissioner shall continue to hold
363 the content of the examination report as private and confidential for a

364 period of thirty days, except to the extent provided in subdivision (2)
365 of this subsection. During this time, the report shall not be subject to
366 subpoena and shall not be subject to discovery or admissible in
367 evidence in any private action, provided no court of competent
368 jurisdiction has ordered production. Thereafter, the commissioner shall
369 open the report for public inspection, provided no court of competent
370 jurisdiction has stayed its publication. This section may not be
371 construed to limit the commissioner's authority to use any final or
372 preliminary market conduct examination report and examiner or
373 company work papers or other documents or any other information
374 discovered or developed during the course of an examination in the
375 furtherance of any legal or regulatory action that the commissioner, in
376 the commissioner's sole discretion may deem appropriate. (2) Nothing
377 contained in sections 2 to 13, inclusive, of this act shall prevent or be
378 construed as preventing the commissioner from disclosing the content
379 of an examination report, preliminary examination report or results, or
380 any matter relating thereto, to the insurance department of this or any
381 other state or agency of the federal government at any time, provided
382 the agency or office receiving the report or matters relating thereto
383 agrees to hold it confidential and in a manner consistent with sections
384 2 to 13, inclusive, of this act.

385 (l) (1) Where the reasonable and necessary cost and fees of a market
386 conduct examination are to be assessed against the insurer under
387 examination, such costs and fees shall be consistent with that
388 otherwise authorized by law. Such costs and fees shall be itemized and
389 bills shall be provided to the insurer on a monthly basis for review
390 prior to submission for payment. (2) The commissioner shall maintain
391 active management and oversight of examination costs and fees,
392 including costs and fees associated with the use of department
393 personnel and examiners and with retaining qualified contract
394 examiners necessary to perform an examination. To the extent the
395 commissioner retains outside assistance, the commissioner shall have
396 in writing protocols that (A) clearly identify the types of functions to
397 be subject to outsourcing, (B) provide specific timelines for completion
398 of the outsourced review, (C) require disclosure of contract examiners'

399 recommendations, (D) establish and utilize a dispute resolution or
400 arbitration mechanism to resolve conflicts with insurers regarding
401 examination costs and fees, and (E) require disclosure of the terms of
402 the contracts with the outside consultants that will be used, specifically
403 the costs and fees or hourly rates that can be charged. (3) The
404 commissioner shall review and affirmatively endorse detailed billings
405 from the qualified contract examiner before the detailed billings are
406 sent to the insurer. (4) The commissioner may contract in accordance
407 with applicable state contracting procedures for such qualified contract
408 actuaries and examiners as the commissioner deems necessary,
409 provided that the compensation and per diem allowances paid to such
410 contract persons shall not exceed one hundred twenty-five per cent of
411 the compensation and per diem allowances for examiners set forth in
412 the guidelines adopted by the National Association of Insurance
413 Commissioners, unless the commissioner demonstrates that one
414 hundred twenty-five per cent is inadequate under the circumstances of
415 the examination.

416 (m) The provisions of this section shall apply notwithstanding any
417 inconsistent provisions in sections 38a-14 and 38a-15 of the general
418 statutes.

419 Sec. 7. (NEW) (*Effective October 1, 2007*) (a) Except as otherwise
420 provided by law, market conduct surveillance personnel shall have
421 free and full access to all books and records, employees, officers and
422 directors, as practicable, of the insurer during regular business hours.
423 An insurer utilizing a third-party model or product for any of the
424 activities under examination shall cause, upon the request of market
425 conduct surveillance personnel, the details of such models or products
426 to be made available to such personnel. All documents, whether from a
427 third-party or an insurer, including, but not limited to, working
428 papers, third-party models or products, complaint logs and copies
429 thereof, created, produced or obtained by or disclosed to the
430 commissioner or any other person in the course of any market conduct
431 actions made pursuant to sections 2 to 13, inclusive, of this act, or in
432 the course of market analysis by the commissioner of the market

433 conditions of an insurer or obtained by the NAIC as a result of any of
434 the provisions of sections 2 to 13, inclusive, of this act, shall be
435 confidential by law and privileged, shall not be subject to subpoena
436 and shall not be subject to discovery or admissible in evidence in any
437 private civil action.

438 (b) No waiver of any applicable privilege or claim of confidentiality
439 in the documents, materials or information shall occur as a result of
440 disclosure to the commissioner under this section.

441 (c) Market conduct surveillance personnel shall be vested with the
442 power to issue subpoenas and examine insurance company personnel
443 under oath when such action is ordered by the commissioner pursuant
444 to subsection (f) of section 38a-14 of the general statutes.

445 (d) Notwithstanding the provisions of subsection (a) of this section,
446 in order to assist in the performance of the commissioner's duties, the
447 commissioner may (1) share documents, materials or other
448 information, including the confidential and privileged documents,
449 materials or information subject to subsection (a) of this section, with
450 other state, federal and international regulatory agencies and law
451 enforcement authorities and the NAIC and its affiliates and
452 subsidiaries, provided the recipient agrees to and has the legal
453 authority to maintain the confidentiality and privileged status of the
454 document, material, communication or other information; (2) receive
455 documents, materials, communications or information, including
456 otherwise confidential and privileged documents, materials or
457 information from the NAIC and its affiliates or subsidiaries and from
458 regulatory and law enforcement officials of other foreign or domestic
459 jurisdictions, and shall maintain as confidential or privileged any
460 document, material or information received with notice or the
461 understanding that it is confidential or privileged under the laws of
462 the jurisdiction that is the source of the document, material or
463 information; and (3) enter into agreements governing the sharing and
464 use of information consistent with this subsection.

465 (e) Notwithstanding the provisions of this section, no insurer shall

466 be compelled to disclose an insurance compliance self-evaluative audit
467 document or waive any statutory or common law privilege, but may
468 voluntarily disclose such document to the commissioner in response to
469 any market analysis, market conduct action or examination as
470 provided in sections 2 to 13, inclusive, of this act.

471 (f) The provisions of this section shall apply notwithstanding any
472 inconsistent provisions in sections 38a-14 and 38a-15 of the general
473 statutes.

474 Sec. 8. (NEW) (*Effective October 1, 2007*) (a) Market conduct
475 surveillance personnel shall be qualified by education, experience and,
476 where applicable, professional designations. The commissioner may
477 supplement the in-house market conduct surveillance staff with
478 qualified outside professional assistance if the commissioner
479 determines that such assistance is necessary.

480 (b) Market conduct surveillance personnel have a conflict of interest,
481 either directly or indirectly, if they are affiliated with the management,
482 have been employed by, or own a pecuniary interest in the insurer
483 subject to any examination under sections 2 to 13, inclusive, of this act
484 within the most recent five years prior to the use of the personnel. This
485 section shall not be construed to automatically preclude an individual
486 from being (1) a policyholder or claimant under an insurance policy,
487 (2) a grantee of a mortgage or similar instrument on the individual's
488 residence from a regulated entity if done under customary terms and
489 in the ordinary course of business, (3) an investment owner in shares
490 of regulated diversified investment companies, or (4) a settlor or
491 beneficiary of a blind trust into which any otherwise permissible
492 holdings have been placed.

493 (c) The provisions of this section shall apply notwithstanding any
494 inconsistent provisions in sections 38a-14 and 38a-15 of the general
495 statutes.

496 Sec. 9. (NEW) (*Effective October 1, 2007*) (a) No cause of action shall
497 arise nor shall any liability be imposed against the commissioner, the

498 commissioner's authorized representatives or an examiner appointed
499 by the commissioner for any statements made or conduct performed in
500 good faith while carrying out the provisions of sections 2 to 13,
501 inclusive, of this act.

502 (b) No cause of action shall arise, nor shall any liability be imposed
503 against any person for the act of communicating or delivering
504 information or data to the commissioner or the commissioner's
505 authorized representative or examiner pursuant to an examination
506 made under sections 2 to 13, inclusive, of this act, if the act of
507 communication or delivery was performed in good faith and without
508 fraudulent intent or the intent to deceive.

509 (c) A person identified in subsection (a) of this section shall be
510 entitled to an award of attorney's fees and costs if he or she is the
511 prevailing party in a civil cause of action for libel, slander or any other
512 relevant tort arising out of activities in carrying out the provisions of
513 sections 2 to 13, inclusive, of this act and the party bringing the action
514 was not substantially justified in doing so. For purposes of this section,
515 a proceeding is "substantially justified" if it had a reasonable basis in
516 law or fact at the time that it was initiated.

517 (d) This section does not abrogate or modify in any way any
518 common law or statutory privilege or immunity heretofore enjoyed by
519 any person identified in subsection (a) of this section.

520 (e) The provisions of this section shall apply notwithstanding any
521 inconsistent provisions in section 38a-14 of the general statutes.

522 Sec. 10. (NEW) (*Effective October 1, 2007*) (a) Fines and penalties
523 levied pursuant to sections 2 to 13, inclusive, of this act or other
524 provisions of title 38a of the general statutes shall be consistent,
525 reasonable and justified.

526 (b) The commissioner shall take into consideration actions taken by
527 insurers that maintain membership in best-practice organizations that
528 exist to promote high ethical standards of conduct in the marketplace,

529 and insurers that self assess, self-report and remediate problems
530 detected to mitigate fines levied pursuant to sections 2 to 13, inclusive,
531 of this act.

532 Sec. 11. (NEW) (*Effective October 1, 2007*) (a) The commissioner shall
533 collect and report market data to the NAIC's market information
534 systems, including the complaint database system, the examination
535 tracking system and the regulatory information retrieval system or
536 other comparable successor NAIC products as determined by the
537 commissioner. In addition to complaint data, the accuracy of insurer-
538 specific information reported to the NAIC to be used for market
539 analysis purposes or as the basis for market conduct actions shall be
540 reviewed by appropriate personnel in the Insurance Department and
541 by the insurer.

542 (b) Information collected and maintained by the Insurance
543 Department shall be compiled in a manner that meets the
544 requirements of the NAIC.

545 (c) After completion of any level of market analysis, prior to further
546 market conduct action, the state shall contact the insurer to review the
547 analysis.

548 (d) (1) A company responding to a commissioner's request to
549 produce information shall produce it as it is kept in the usual course of
550 business or shall organize and label it to correspond with the
551 categories in the demand. (2) If a commissioner's request does not
552 specify the form or forms for producing electronically stored
553 information, a company responding to the request shall produce the
554 information in a form or forms in which the company ordinarily
555 maintains it or in a form or forms that are reasonably usable. (3) A
556 company responding to an information request need not produce the
557 same electronically stored information in more than one form. (4) A
558 company responding to an information request need not provide the
559 electronically stored information from sources that the company
560 identifies as not reasonably accessible because of undue burden or
561 cost. The provisions of this subsection shall apply notwithstanding any

562 inconsistent provisions in sections 38a-14 and 38a-15 of the general
563 statutes.

564 Sec. 12. (NEW) (*Effective October 1, 2007*) The commissioner shall
565 share information and coordinate the Insurance Department's market
566 analysis and examination efforts with other states through the NAIC.

567 Sec. 13. (NEW) (*Effective October 1, 2007*) (a) At least once per year,
568 or more frequently if deemed necessary, the commissioner shall make
569 available in an appropriate manner to insurers and other entities
570 subject to the scope of title 38a of the general statutes information on
571 new laws and regulations, enforcement actions and other information
572 the commissioner deems pertinent to ensure compliance with market
573 conduct requirements.

574 (b) The commissioner shall designate a specific person or persons
575 within the Insurance Department whose responsibilities shall include
576 the receipt of information from employees of insurers and licensed
577 entities concerning violations of laws, rules or regulations by
578 employers. Such person or persons shall be provided with proper
579 training on the handling of such information, which shall be deemed a
580 confidential communication for the purposes of this section.

581 (c) For any change made to a work product referenced in sections 2
582 to 13, inclusive, of this act, which materially changes the way in which
583 market analysis, market conduct actions or market conduct
584 examinations are conducted, the commissioner shall give notice and
585 provide parties with an opportunity for a public hearing pursuant to
586 chapter 54 of the general statutes.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2007</i>	New section
Sec. 2	<i>October 1, 2007</i>	New section
Sec. 3	<i>October 1, 2007</i>	New section
Sec. 4	<i>October 1, 2007</i>	New section
Sec. 5	<i>October 1, 2007</i>	New section

Sec. 6	<i>October 1, 2007</i>	New section
Sec. 7	<i>October 1, 2007</i>	New section
Sec. 8	<i>October 1, 2007</i>	New section
Sec. 9	<i>October 1, 2007</i>	New section
Sec. 10	<i>October 1, 2007</i>	New section
Sec. 11	<i>October 1, 2007</i>	New section
Sec. 12	<i>October 1, 2007</i>	New section
Sec. 13	<i>October 1, 2007</i>	New section

INS *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Insurance Dept.	GF - Revenue Loss	Significant	Significant
Insurance Dept.	IF - Cost	Potential Indeterminate	Potential Indeterminate
Insurance Dept.	IF - Savings	Potential	Potential

Note: GF=General Fund; IF=Insurance Fund

Municipal Impact: None

Explanation

This bill would result in a significant revenue loss to the Insurance Department by partially curtailing the Insurance Department's ability to levy penalty and fine revenues related to the market conduct examination process and the agency's decreased scope of participation in the process. The department collects approximately \$1.2 million, on average annually, in fines and penalties which are deposited into the General Fund.

It would also result in a revenue loss of about \$60,000 each year in licensing and appointment fees related to the inability to uncover and require licensure of insurers and agents in the industry. Additionally, the bill could result in additional staff training costs for the agency's market conduct examiners regarding the new examination process.

Lastly, the bill could result in savings related to a reduction in workload. The bill limits the Insurance Department's scope of review and ability to impose fines since the bill limits the department's ability to collect information needed for an examination. A reduction in workload, and realization of possible savings, could also be experienced since the bill limits the department's ability to uncover

and require licensure of insurers and agents.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**SB 62*****AN ACT ADOPTING THE MARKET CONDUCT SURVEILLANCE
MODEL ACT.*****SUMMARY:**

This bill establishes the Market Conduct Surveillance Act and is based on a National Conference of Insurance Legislators (NCOIL) model act. It significantly revises current market conduct examination statutes applicable to insurers. Those statutes require the insurance commissioner to examine insurers doing business in the state as often as necessary but at least every five years, follow the National Association of Insurance Commissioners (NAIC) market conduct handbook, and set procedures for conducting examinations. (It appears that the current laws, which are also applicable to HMOs, remain in effect for examinations of HMOs since the bill addresses only insurers.)

The bill specifies:

1. a framework for the Insurance Department to identify, assess, and prioritize insurance market conduct surveillance activities;
2. ways for collecting market data;
3. the causes or conditions that may trigger an examination;
4. procedures and timelines for comprehensive and targeted examinations; and
5. procedures for communicating and coordinating activities with other states.

It requires the commissioner to designate department staff whose responsibilities must include receiving whistleblower complaints.

It limits the commissioner's authority to examine certain companies doing business in the state by requiring the commissioner to accept a market conduct examination report prepared by another state's insurance commissioner instead of performing his or her own examination if the other state's (1) laws are substantially similar to Connecticut's, (2) market conduct surveillance system is comparable, and (3) insurance department performed the examination within the past three years. In addition, it authorizes the commissioner to conduct comprehensive or targeted examinations of domestic companies and targeted examinations only of foreign companies.

The bill also requires the commissioner to use NAIC work products, including its Consumer Complaint Database, Market Analysis Handbook, Market Regulation Handbook, Market Conduct Uniform Examination Procedures, and Regulatory Information Retrieval System or comparable successor products.

EFFECTIVE DATE: October 1, 2007

MARKET CONDUCT EXAMINATION (§ 2)

The bill defines a "market conduct examination" as an examination of the insurance operations of an insurer licensed to do business in the state in order to evaluate compliance with applicable state laws and regulations. It is separate and distinct from a financial examination, but may be conducted at the same time.

A "comprehensive market conduct examination" is a review of one or more lines of business of an insurer domiciled in the state that is not conducted for cause. It includes a review of rating, tier classification, underwriting, policyholder service, claims, marketing and sales, producer licensing, complaint handling practices, or compliance procedures and policies.

A "targeted examination" is a focused exam conducted for cause

based on the results of market analysis indicating the need to review either a specific line of business or specific business practices, including underwriting and rating, marketing and sales, complaint handling operations and management, advertising materials, licensing, policyholder services, nonforfeitures, claims handling, or policy forms and filings. A targeted examination may be conducted by desk examination (i.e., a location other than the insurer's premises, such as at the Insurance Department) or by an on-site examination (i.e., at the insurer's home office or location where the insurer stores the records that are under review).

INSURANCE COMMISSIONER AUTHORITY AND DUTY (§ 3)

The bill requires the commissioner to perform market conduct examinations of insurers for Connecticut policyholder protection through comprehensive or targeted examinations of domestic insurers and targeted examinations of foreign insurers as the commissioner deems necessary based on results of his market analysis. "Market analysis" is a process whereby the Insurance Department's market conduct surveillance personnel collect and analyze information in order to develop a baseline and identify insurer patterns or practices that deviate significantly from the norm or may pose a potential risk to the insurance consumer.

The bill authorizes the commissioner to delegate the responsibility for conducting an examination to another state's insurance commissioner if that commissioner agrees and the insurer has a significant number of policies or significant premium volume in that state. The commissioner must accept the other state's examination report.

Instead of conducting a market conduct examination, the bill also requires the commissioner to accept a market conduct examination report prepared by the insurance commissioner of the insurer's domicile state or another state, if:

1. the commissioner deems the other state's laws for the

examination topic substantially similar to Connecticut's;

2. the commissioner deems the other state's market conduct surveillance system comparable to one required by the bill; and
3. the other state commissioner's examination was conducted in the past three years.

If the other state's insurance commissioner did not evaluate the specific area, issue, or legal requirement that concerns Connecticut's commissioner, then he or she may perform a targeted examination or market analysis of that issue. The commissioner's discretionary determination cannot be appealed.

If the other state's examination shows that an insurer should modify a specific practice or procedure, the commissioner must accept documentation that the insurer made a similar modification in this state, instead of initiating a market conduct action or examination of that practice or procedure. The commissioner may require other or additional practices or procedure modifications as needed for compliance with specific state laws or regulations which differ substantially from those of the other state that conducted the examination. (However, as described above, the other state's laws have to be substantially similar to Connecticut's for the commissioner to defer to the other state's examination in the first place.)

MARKET DATA COLLECTION (§ 4)

The bill requires the commissioner to gather information from data currently available to the Insurance Department, surveys, required reports, information collected by NAIC and a variety of other sources in both the public and private sectors, objective sources from within and outside the insurance industry, insurers' websites, agents, and other organizations and sources, if the sources are published at least annually in a bulletin or circular before the commissioner uses the information.

Market Analysis (§§ 4 & 11)

The commissioner's market conduct surveillance personnel must analyze the data in order to develop a baseline understanding of the marketplace and identify for further review insurers or practices that deviate significantly from the norm or that may pose a potential risk to the insurance consumer. The commissioner must use the NAIC market analysis handbook as one resource in performing the analysis or substantially similar procedures adopted in regulations. In completing the analysis, the commissioner must identify key lines of business for systematic review and companies for further analysis.

If the analysis compels the commissioner to inquire further into a particular insurer or practice, the bill requires the commissioner to consider taking other actions before conducting a targeted, on-site market conduct examination, including:

1. correspondence with the insurer;
2. insurer interviews;
3. information gathering;
4. policy and procedure reviews;
5. interrogatories; and
6. a review of the insurer's self-evaluation and compliance programs, including membership in a best-practice organization.

The commissioner must inform the insurer of the action selected in writing. The bill requires the commissioner to contact the insurer after completing any level of market analysis to review it before taking further market conduct action.

The bill defines an "insurance compliance self-evaluative audit document" as documents prepared as a result of, or in connection with, an insurance compliance audit, including:

1. a written response to the insurance compliance audit findings

and

2. field notes and records of observations, findings, opinions, suggestions, conclusions, drafts, memoranda, drawings, photographs, exhibits, computer generated or electronically recorded information, phone records, maps, charts, graphs, and surveys, provided the supporting information is collected or developed for the primary purpose of, and during, an insurance compliance audit.

An “insurance compliance audit” is a voluntary, internal evaluation, review, assessment, audit, or investigation to identify or prevent noncompliance or promote compliance with laws, regulations, orders, or industry or professional standards, conducted by or on behalf of a licensed insurer or that involves an activity regulated under title 38a of the Connecticut General Statutes.

The bill requires the commissioner to select a market conduct action that is cost-effective for the Insurance Department and insurer, while still protecting the insurance consumer. The commissioner must also

1. take steps reasonably necessary to eliminate requests for information that duplicate information the insurer already provided as part of an annual financial statement, the NAIC annual market conduct statement, or other required schedules, surveys, or reports regularly submitted to the commissioner or with data requests made by other states if that information is available to the commissioner, unless the information is state-specific and
2. coordinate market conduct actions and findings with other states.

Targeted Examination Triggers (§ 4)

The bill specifies causes or conditions identified through market analysis that may trigger a targeted examination, including information that indicates potential fraud, conducting the business of

insurance without a license, or a potential pattern of unfair insurance practice in violation of state law, such as (1) information obtained from a market conduct annual statement, market survey, or financial examination report; (2) a number of complaints against the insurer or a complaint ratio determined by line of business; and (3) information from other objective sources (e.g., published advertisements). Patterns of violating insurance laws and regulations that cause consumers harm may also trigger a targeted examination.

MARKET CONDUCT ACTIONS (§ 5)

The bill requires that market conduct actions taken as a result of a market analysis must focus on general business practices and compliance activities of insurers, rather than infrequent or unintentional random errors that do not cause consumer harm.

It authorizes the commissioner to determine market conduct action frequency and timing. The timing must depend on the specific action, except extraordinary circumstances indicating a consumer risk require immediate action. If the commissioner has information that more than one insurer is engaged in common practices that may violate insurance laws or regulations, the bill allows the commissioner to schedule and coordinate multiple examinations simultaneously.

The bill requires the commissioner to (1) tell the insurer at least 60 days before starting the market conduct action what practice or procedure is to be examined and (2) give the insurer an opportunity to resolve matters that arise as a result of the market analysis to the commissioner's satisfaction before taking additional market conduct actions. If the insurer has modified practices or procedures as a result of a market conduct action taken by another state's insurance commissioner, the commissioner must accept appropriate documentation that the insurer has satisfactorily done so and made a similar modification to practices or procedures in this state.

MARKET CONDUCTION EXAMINATION PROCEDURES (§ 6)

Under the bill, when a market analysis identifies an insurer's

pattern of conduct or practice that requires further investigation and less intrusive market conduct actions are not appropriate, the commissioner may conduct a targeted market conduct examination. If the insurer is not domestic (organized under Connecticut's laws), the commissioner must communicate, and may coordinate the examination, with the insurance commissioner of the insurer's domicile state.

The bill prohibits the commissioner from performing a comprehensive market conduct examination of an insurer more often than once every three years. It permits the commissioner to forgo a comprehensive examination based on market analysis findings.

The bill requires that surveillance personnel, before starting a targeted on-site examination, (1) use desk examinations, to the extent possible, and data requests and (2) prepare a work plan and proposed budget, which must be reasonable for the examination scope.

Examination Announcement

The bill requires the commissioner to (1) post notification on the NAIC's examination tracking system that a market conduct examination has been scheduled and (2) give the insurer an examination announcement at least 60 days before the estimated examination start date. The announcement must include:

1. the insurer's name and address;
2. the name and contact information of the examiner-in-charge;
3. the reason for and the scope of the targeted examination;
4. the date the examination is scheduled to begin;
5. identification of any personnel from other than the Insurance Department who will assist in the examination, if known when the notice is prepared;
6. a time estimate for the examination;

7. a proposed budget and work plan for the examination and identification of reasonable and necessary costs and fees that will be included, if the cost of the examination is billed to the insurer; and
8. a request for the insurer to name its examination coordinator.

The bill requires that, if a targeted examination is expanded beyond the reasons provided to the insurer in the announcement, the commissioner must provide the insurer written notice explaining the extent of, and reasons for, the expansion. The department must provide the insurer a revised work plan before beginning any significantly expanded examination, unless extraordinary circumstances indicating a risk to consumers require immediate action.

The bill requires the department to use the NAIC standard data request or a comparable product adopted by regulation (presumably when requesting the insurer to produce information for the examination).

Pre-Examination and Exit Conferences

The bill requires the commissioner to conduct a pre-examination conference with the insurer's examination coordinator and key personnel to clarify expectations 30 days before the examination starts.

It requires the examiner-in-charge to schedule an exit conference with the insurer before ending the examination (presumably to review preliminary findings and next steps).

Examination Report

The bill requires the commissioner to follow a specified timeline for producing an examination report, unless a mutual agreement is reached with the insurer to modify it. The commissioner must deliver a draft report to the insurer within 60 days of confirming in writing that the examination is complete. The insurer must respond with written comments within 30 days of receiving the draft report. The department must make a good faith effort to resolve issues and

prepare a final report within 30 days of receiving the insurer's written comments unless a mutual agreement is reached to extend the deadline. The commissioner may make corrections and other changes, as appropriate, to the report. Within 30 days of receiving the final report, the insurer must (1) accept the final report, (2) accept the findings of the report, (3) file written comments, or (4) request a hearing. The insurer must be allowed an additional 30 days if the commissioner and the insurer mutually agree. An insurer must request a hearing in writing. The final written and electronic market conduct report must include the insurer's written response, if any, and any corrections or changes agreed to. The response may be included either as an appendix or in text of the examination report. References to specific individuals by name must be limited to an acknowledgement of their involvement in the examination.

The bill requires the commissioner to keep the final adopted examination report private and confidential for 30 days, during which it is not subject to subpoena and cannot be subject to discovery or admissible in evidence in any private action, provided no court of competent jurisdiction has ordered production. After the 30 days, the commissioner must open the report for public inspection, unless a court of competent jurisdiction has stayed its publication. However, during the 30 days, the commissioner may use a final or draft examination report, examiner or insurer work papers, or other documents or information discovered or developed during the examination to further any legal or regulatory action that the commissioner, in his or her sole discretion, deems appropriate. The commissioner may also disclose the contents of an examination report or results, or any related matter, to any state's Insurance Department or federal government agency at any time, if the department or agency receiving it agrees to hold it confidential.

Examination Costs

Current law requires the insurer being examined to pay certain examination costs. Under the bill, when reasonable and necessary costs and fees of a market conduct examination are assessed against

the insurer under examination, the costs and fees must be (1) consistent with those otherwise authorized by law and (2) itemized. Bills must be given to the insurer on a monthly basis for review before requesting payment.

The bill requires the commissioner to maintain active management and oversight of examination costs and fees, including those associated with the use of department personnel and retained contract examiners. To the extent the commissioner retains outside assistance, the commissioner must have written protocols that:

1. clearly identify the types of functions subject to outsourcing,
2. provide specific timelines for completing the outsourced review,
3. require disclosure of the contract examiners' recommendations,
4. establish and use a dispute resolution or arbitration mechanism to resolve conflicts with insurers regarding examination costs and fees, and
5. require disclosure of the contract terms with the retained outside consultants, specifically the costs and fees or hourly rates that can be charged.

The commissioner must review and affirmatively endorse detailed billings from a contracted examiner before the detailed billings are sent to the insurer. The commissioner may contract in accordance with applicable state contracting procedures for qualified contract actuaries and examiners as the commissioner deems necessary, provided that the compensation and per diem allowances paid do not exceed 125% of the compensation and per diem allowances for examiners set forth in NAIC guidelines unless the commissioner demonstrates that 125% is inadequate under the circumstances.

INFORMATION CONFIDENTIALITY AND PRODUCTION (§§ 6, 7, & 11)

The bill makes all documents, including working papers, third-

party models or products, and complaint logs, created, produced, or obtained by or disclosed to the commissioner or any other person in the course of any market conduct actions or market analysis or obtained by the NAIC (1) confidential and privileged, (2) not subject to subpoena or discovery, and (3) not admissible in evidence in any private civil action. The bill specifies that disclosing documents to the commissioner does not waive an insurer's privilege or claim of confidentiality in the documents, materials, or information.

The bill authorizes the commissioner to (1) share documents, materials, or other information, including confidential and privileged ones, with other state, federal, and international regulatory agencies and law enforcement authorities and the NAIC and its affiliates and subsidiaries, if the recipient agrees to and has the legal authority to maintain the information's confidential and privileged status; (2) receive documents, materials, communications, or information, including confidential and privileged ones from those same jurisdictions; and (3) enter into agreements governing the sharing and use of information. The commissioner must maintain as confidential or privileged any document, material, or information received from another jurisdiction with notice or the understanding that it is confidential or privileged.

The bill specifies that an insurer may not be compelled to disclose an insurance compliance self-evaluative audit document or waive any statutory or common law privilege, but may voluntarily disclose a self-evaluative document to the commissioner in response to a market analysis, market conduct action, or examination.

The bill requires an insurer responding to a commissioner's request to produce information to (1) produce it as it is kept in the usual course of business or (2) organize and label it to correspond with the categories requested. If a commissioner's request does not specify the form for producing electronically stored information, an insurer must produce the information in a form in which the insurer ordinarily maintains it or that is reasonably usable. An insurer does not need to

(1) produce the same electronically stored information in more than one form or (2) provide the electronically stored information from sources that the company identifies as not reasonably accessible because of undue burden or cost. (These provisions are included in two sections of the bill, §§ 6 and 11. See lines 322-337 and lines 548-561.)

MARKET CONDUCT SURVEILLANCE PERSONNEL (§§ 7-9)

The bill requires, except as otherwise provided by law, market conduct surveillance personnel to have free and full access to an insurers books, records, employees, officers, and directors, as practicable, during regular business hours. If an insurer delegates activities under examination to a third-party, it must make the details of those available to the surveillance personnel on request.

The bill grants surveillance personnel the power to issue subpoenas and examine insurance company personnel under oath when the commissioner orders it pursuant to CGS § 38a-14(f). (It is unclear if that section grants the commissioner the authority to issue such orders.)

The bill requires that surveillance personnel be qualified by education, experience, and professional designations if available. It authorizes the commissioner to supplement in-house personnel with qualified outside professional assistance if necessary.

The bill states that people serving as surveillance personnel have a conflict of interest, either directly or indirectly, if they are affiliated with the management or have been employed by, or own a pecuniary interest in, the insurer subject to examination within the most recent five years. The bill specifies it does not automatically preclude such a person from being (1) a policyholder or claimant under an insurance policy, (2) a grantee of a mortgage or similar instrument on the individual's residence from a regulated entity if done under customary terms and in the ordinary course of business, (3) an investment owner in shares of regulated diversified investment companies, or (4) a settlor

or beneficiary of a blind trust into which any otherwise permissible holdings have been placed. (Although the bill describes conflict of interest, it does not appear to prohibit a person with a conflict of interest from working on a particular examination.)

Immunity

The bill specifies that no cause of action or liability accrues against (1) the commissioner, the commissioner's authorized representatives, or appointed examiners for statements made or conduct performed in good faith while carrying out market conduct action and (2) any person communicating or delivering information to the commissioner, authorized representative or examiner during an examination if performed in good faith and without fraudulent intent or the intent to deceive.

The bill entitles the commissioner, the commissioner's authorized representatives, appointed examiners, or an insurer's representative to an award of attorney's fees and costs if (1) he or she is the prevailing party in a civil action for libel, slander, or any other relevant tort arising out of activities in carrying out the bill and (2) the party bringing the action was not substantially justified in bringing the action. The bill defines a proceeding as "substantially justified" if it had a reasonable basis in law or fact at the time it was initiated.

The bill states that it does not abrogate or modify any common law or statutory privilege or immunity the people mentioned above currently enjoy.

FINES AND PENALTIES (§ 10)

The bill requires that fines and penalties levied (1) as a result of market conduct actions taken under this bill and (2) under other sections of state insurance law, be consistent, reasonable, and justified. It requires the commissioner to take into consideration, to mitigate fines, actions taken by insurers that (1) maintain membership in best-practice organizations that exist to promote high ethical standards of marketplace conduct and (2) self assess, self-report, and remediate

problems detected.

USE OF NAIC SYSTEMS (§§ 6, 11, & 12)

The bill requires the commissioner to perform examinations in accordance with the NAIC market conduct uniform examination procedures and market regulation handbook or procedures adopted by regulation that are substantially similar.

It requires the commissioner to collect and report market data to the NAIC's market information systems, including its complaint database system, examination tracking system, and regulatory information retrieval system or other comparable successors. It requires the Insurance Department and the insurer to review the complaint data and the accuracy of insurer-specific information reported to NAIC for market analysis purposes or as the basis for market conduct actions.

It requires the Insurance Department to compile information it collects and maintains in a way that meets NAIC requirements. It also requires the commissioner to share information and coordinate the department's market analysis and examination efforts with other states through NAIC.

COMMUNICATION WITH REGULATED ENTITIES (§ 13)

The bill requires the commissioner, at least once a year or more frequently if the commissioner deems it necessary, to make available to insurers and other entities subject to the state insurance law (e.g., HMOs), in an appropriate manner, information on new laws and regulations, enforcement actions, and other information the commissioner deems pertinent to ensure compliance with market conduct requirements.

It requires the commissioner to give interested parties notice of, and an opportunity for, a public hearing on any changes made to a work product that materially changes the way in which market analysis, market conduct actions, or market conduct examinations are performed.

WHISTLEBLOWERS (§ 13)

The bill requires the commissioner to designate specific staff in the Insurance Department whose responsibilities include receiving information from insurers' and licensed entities' employees concerning their employers' violations of laws, rules, or regulations. The commissioner must provide the staff with proper training on the handling of such information, which the bill deems confidential.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable

Yea 19 Nay 0 (03/13/2007)